

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BRIAN ANDRE WARREN,

Petitioner,

v.

Case No. 06-CV-14462-DT

RAYMOND D. BOOKER,

Respondent.

OPINION AND ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Brian Andre Warren is a state inmate currently incarcerated at the Ryan Correctional Facility in Detroit, Michigan, pursuant to convictions for first-degree felony murder, two counts of first-degree criminal sexual conduct, assault and battery, and kidnapping. He has filed a *pro se* petition for a writ of habeas corpus challenging these convictions. The court finds that the petition is duplicative of a pending petition filed in the United States District Court for the Western District of Michigan, and therefore dismisses the petition.

On November 25, 2005, Petitioner filed a habeas corpus petition in the Western District of Michigan, challenging his 1995 convictions for felony murder, first-degree criminal sexual conduct, first-degree home invasion, assault and battery, and kidnapping. See *Warren v. Jackson*, No. 05-0791 (W.D. Mich.). The challenged convictions were rendered in Calhoun County Circuit Court. Petitioner was sentenced on October 16, 1995, and an amended judgment of sentence was issued on September 14, 2005. In his November 25, 2005 petition, Petitioner argues that he is entitled to be

discharged from imprisonment because, *inter alia*, the Calhoun County Circuit Court denied him an opportunity to be heard and his right to counsel when it issued an amended judgment of sentence without providing Petitioner a hearing or appointing counsel. That matter remains pending in the Western District.

On October 12, 2006, Petitioner filed the pending petition for writ of habeas corpus, contesting the same amended judgment of sentence challenged in the petition pending in the Western District. Petitioner argues that the Calhoun County Circuit Court denied him his right to appeal and his right to counsel by issuing the amended judgment of sentence by mail and without appointing counsel to represent Petitioner.

"[A] suit is duplicative if the claims, parties, and available relief do not significantly differ between the two actions." *Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir.1993) (internal quotation marks and citations omitted). This petition challenges the same amended judgment of sentence challenged in the petition currently pending in the Western District and raises claims that are substantially similar to claims raised in the earlier-filed petition. Therefore, the instant petition is duplicative and shall be dismissed. See *Davis v. U.S. Parole Commission*, No. 88-5905, 1989 WL 25837 (6th Cir. Mar. 7, 1989) (holding that a district court may dismiss a habeas petition when it is duplicative of a pending habeas petition); *Marks v. Wolfenbarger*, No. 06-14325, 2006 WL 2850340, *1 (E.D. Mich. Oct. 3, 2006) (same); *Fuson v. Harry*, No. 06-13211, 2006 WL 2421639, *1 (E.D. Mich. Aug. 22, 2005) (same). To the extent that Petitioner wishes to raise additional claims not already before the court in the earlier-filed petition, Petitioner may do so by seeking leave to amend that petition in accordance with the requirements of Federal Rule of Civil Procedure 15. Accordingly,

IT IS ORDERED that the petition for a writ of habeas corpus [Dkt. #1] is
DISMISSED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: October 31, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 31, 2006, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522